

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 20, 2006

To: The Commission
(Meeting of April 27, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1627 (Kehoe) – Wireless telecommunication facilities**
As Amended April 17, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support

SUMMARY OF BILL:

As part of the Permit Streamlining Act, this bill would require a lead agency to approve or disapprove a development project that is a structure primarily designed to support a wireless telecommunications facility, within 90 days from the date of certification by the lead agency of the environmental impact report, if certain conditions are met.

This bill would prohibit a city or county from taking certain actions as a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications facility, and would specify that a development project for a wireless telecommunications facility is not subject to a permit to operate.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

In terms of wireless broadband deployment, this bill is consistent with the Commission's policy supporting a streamlined certification process for new carriers deploying broadband facilities as set forth in the Commission's broadband report issued in year 2005.

DIVISION ANALYSIS (Telco Division):

The Commission completed a rulemaking proceeding in 2005 identifying the factors that prevent ubiquitous availability of advanced communications services in California and

issued a broadband deployment report in May 2005. The Broadband Report noted wireless technologies have the potential to become a viable last mile broadband connection, which may increase the possibility for ubiquitous broadband deployment and broadband connection competition.

Also, the Broadband Report identified one of the barriers to broadband communication is that the right of way (ROW) application processes required by local agencies are often inconsistent, costly and time-consuming.

By creating statewide standards for permitting of wireless telecommunications facilities, SB 1627 will ensure that locals maintain the appropriate level of control while not standing in the way of needed and desired expansion of our communications network.

LEGISLATIVE HISTORY:

None

FISCAL IMPACT:

None

STATUS:

SB 1627 is scheduled to be heard in the Senate Environmental Quality on April 24, 2006.

SUPPORT/OPPOSITION: (as of 3/30/06)**Support**

T-Mobile, Inc.

Opposition

None on file.

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BILL LANGUAGE:

BILL NUMBER: SB 1627 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 17, 2006
AMENDED IN ASSEMBLY MARCH 29, 2006
AMENDED IN SENATE MARCH 27, 2006

INTRODUCED BY Senator Kehoe

FEBRUARY 24, 2006

An act to amend Sections 65928 and 65950 of, and to add Sections 65850.6 and 65964 to, the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1627, as amended, Kehoe Wireless telecommunication facilities.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, and open space.

This bill would require a city, including a charter city, or county to administratively approve an application to collocate a wireless telecommunications facility, as defined, through the issuance of a building permit or ~~similar~~ a nondiscretionary permit, as specified.

The Permit Streamlining Act requires a public agency that is the lead agency for a development project to approve or disapprove a development project within a specified number of days from the date of certification by the lead agency of an environmental impact report, if the report is prepared pursuant to specified provisions.

This bill would require a lead agency to approve or disapprove a development project that is a structure primarily designed to support a wireless telecommunications facility, within 90 days from the date of certification by the lead agency of the environmental impact report, if certain conditions are met.

The act defines the term "development project" to include projects involving the issuance of a permit for construction or reconstruction but not a permit to operate.

This bill would prohibit a city or county from taking certain actions as a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications facility, and would specify that a development project for a wireless telecommunications facility is not subject to a permit to operate.

By imposing new duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65850.6 is added to the Government Code, to read:

65850.6. (a) A city, including a charter city, or county shall administratively approve an application to collocate a wireless telecommunications facility through the issuance of a building permit or ~~similar nondiscretionary permit~~ *a nondiscretionary permit issued by the planning department*. Review of the application shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. With respect to the consideration of the environmental effects of radio frequency emissions, the city's or the county's review shall be limited to that authorized by Section 332(c)(7) of Title 47 of the United States Code.

(b) For purposes of this section, the following definitions apply:

(1) "Collocation" means the placement or installation of wireless facilities, including antennas, and related equipment, on existing structures such as towers, buildings, utility poles, and water tanks upon which wireless telecommunications facilities and equipment already exist. *Collocation does not include expanding the highest point of the existing structure by more than 20 percent or expanding the foundation of the structure beyond the boundaries of the original project approved by the city or county.*

(2) "Wireless telecommunications facility" means equipment and network components such as antennas, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

(c) The Legislature finds and declares that the collocation of wireless telecommunications facilities, as defined in this section, has a significant economic impact in California and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but is a matter of statewide concern.

SEC. 2. Section 65928 of the Government Code is amended to read:

65928. "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. A development project for a wireless telecommunications facility, as defined in Section 65850.6, shall not be subject to a permit to operate. "Development project" does not include any ministerial projects proposed to be carried out or approved by public agencies.

SEC. 3. Section 65950 of the Government Code is amended to read:

65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:

(A) The development project is affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for, or will be applied for, and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable, as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(3) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project that is a structure primarily designed to support a wireless telecommunications facility, as defined in Section 65850.6, and there is confirmation that the application has been made to the city or county prior to the certification of the environmental impact report.

(4) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.

(5) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

SEC. 4. Section 65964 is added to the Government Code, to read:

65964. As a condition of approval of an application for a permit for construction or reconstruction for a development project for a

wireless telecommunications facility, as defined in Section 65850.6, a city or county shall not do any of the following:

(a) Require an escrow deposit ~~or surety requirements~~ for removal of a wireless telecommunications facility or any component thereof.

(b) Unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent compelling land use or public safety reasons.

(c) Require that all wireless telecommunications facilities be limited to certain geographic areas or sites owned by particular parties within the jurisdiction of the city or county.

~~(d) Condition approval of a telecommunications facility on the agreement by the applicant to reserve space at, or on, the facility for the telecommunications needs of the city or county.~~

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.